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July 12, 2002

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VIA HAND DELIVERY

Hon. Sara Kyle, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Generic Docket to Consider Technology Advances*  
Docket No. 02-00434

Dear Chairman Kyle:

Enclosed are the original and fourteen copies of the Response of BellSouth to CLECs' Motion for Reconsideration. Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH:ch

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7/16/02

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

IN RE: *Generic Docket to Consider Technology Advances*

Docket No. 02-00434

**RESPONSE OF BELL SOUTH TELECOMMUNICATIONS, INC.  
TO CLECS' MOTION FOR RECONSIDERATION**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Response to the Motion for Reconsideration filed by the various CLECs ("the CLECs") in this docket on or about June 28, 2002.

**INTRODUCTION**

On April 26, 2001, the Pre-Hearing Officer issued a Notice of Filing allowing interested persons to file comments addressing the UNE rates that should be reviewed in this docket "as a result of technology advances" and the "UNEs for which an initial rate is needed as a result of technology advances." Both BellSouth and the CLECs filed such comments on May 24, 2002. On June 13, 2002, the Pre-Hearing Officer entered an Order that provides, in part, that

After considering these comments, the Pre-Hearing Officer finds that additional argument is needed to aid the Authority in developing a comprehensive list of the UNE rates to be fixed in this docket. Specifically, the Pre-Hearing Officer notes that the Consolidated CLECs' arguments focus on advances impacting loops and switching, yet their list includes elements other than loops and switching. Therefore, it would be beneficial if the Consolidated CLECs were to supplement their comments by providing a detailed description of the technology advance impacting each item listed in the Attachment to the *Consolidated CLEC Comments* and describe in detail how the advance has reduced the cost of the item. In addition, responsive

arguments also would aid the Authority in evaluating technology advances.

See Order at 3-4.

The CLECs responded to this Order by filing a Motion for Reconsideration in which they bluntly state that the Pre-Hearing Officer's Order "is not reasonable." Not only do the CLECs object to filing supplemental comments as directed by the Order, but they also urge the Pre-Hearing Officer to order "a revisiting of all UNE rates in Tennessee" and to require BellSouth "to file the [BellSouth Telecommunications Loop Model] for Tennessee as well as its other revised and updated cost studies." See Motion at 4. For the reasons set forth below, the Pre-Hearing Officer should deny the CLECs' Motion in its entirety.

**I. DESPITE THE CLECS' ASSERTIONS TO THE CONTRARY, THE TRA DID NOT CONVENE THIS DOCKET TO CONSIDER THE BELL SOUTH TELECOMMUNICATIONS LOOP MODEL ("BSTLM") AND THE TRA DID NOT EMPOWER THE PRE-HEARING OFFICER TO REQUIRE BELL SOUTH TO FILE THE BSTLM IN THIS DOCKET.**

The CLECs claim that the TRA convened this docket "to consider [the BSTLM] as well as other technology advances," see Motion at 2, and a substantial portion of the CLECs' Motion is devoted to a discussion of the BSTLM. The CLECs, however, are simply wrong when they claim that the TRA decided to consider the BSTLM in this docket, and their reliance on the BSTLM is misplaced. As explained below, the purpose of this docket is to consider whether technology advances have taken place that warrant the revisiting of the rates for certain UNEs

and not to consider whether to require BellSouth to start the modeling/cost study process anew.

In November 2000, the TRA ruled that "[t]he BellSouth TELRIC Calculator Model is adopted for the purpose of setting permanent UNE rates."<sup>1</sup> In so ruling, the TRA noted its desire to ensure that this TELRIC Calculator Model "is populated only with those costs that reflect the least cost and most efficient technology."<sup>2</sup> In January 2001, the TRA ordered BellSouth "to include in Tennessee cost studies any new technology that has been included in similar cost studies that BellSouth has filed in other states."<sup>3</sup> Finally, in the Final Order it issued in February 2001, the TRA found that "BellSouth can adjust its inputs, work times, fallout, and split between electronic and manual processing *without completely starting the modeling process anew.*"<sup>4</sup> The TRA, however, noted that "the process of incorporating technology advances may be cumbersome and delay establishing permanent prices for unbundled network elements," and it decided to "convene a new generic proceeding to consider technology advances . . . ."<sup>5</sup>

The TRA's stated purpose of convening this docket, therefore, is to consider whether technology advances have taken place that warrant the revisiting of the

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<sup>1</sup> See Second Interim Order Re: Revised Cost Studies and Geographic Deaveraging, *In Re: Petition of BellSouth Telecommunications, Inc. to Convene a Contested Case to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements*, Docket No. 97-01262 at 11 (November 22, 2000).

<sup>2</sup> *Id.* at 9.

<sup>3</sup> See Third Interim Order Re: BellSouth's Revised Cost Studies, *In Re: Petition of BellSouth Telecommunications, Inc. to Convene a Contested Case to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements*, Docket No. 97-01262 at 7 (January 4, 2001).

rates for certain UNEs *without completely starting the modeling process anew*. The Pre-Hearing Officer clearly is empowered to determine the scope of technology advances (if any) that are to be considered in this docket.<sup>6</sup> The CLECs, however, have asked the Pre-Hearing Officer to require "BellSouth to file the BSTLM," which is an entirely different cost model than the one adopted by the TRA in this proceeding. By doing so, CLECs have asked the Pre-Hearing Officer to change the nature of this proceeding by forcing BellSouth to begin the modeling/cost study process anew, where not only would new technology be debated, but any and all modeling, cost inputs and cost study approaches would once again be opened to debate. In essence, the CLECs ask the TRA to throw away everything that has just recently been decided by the TRA and start the whole cost study process over again. Clearly, it would be inappropriate for the Pre-Hearing Officer to do so. *Cf.* Order Denying Petition for Clarification or Reconsideration, *In Re: Complaint of XO Tennessee, Inc. Against BellSouth Telecommunications, Inc.*, Docket No. 01-00868 at 3 (May 14, 2002)(finding that "it is reasonable to conclude that the authority delegated to the Hearing Officer by the TRA was limited to resolving only the subject of the complaints as amended" and "as such, it would be inappropriate for the Hearing Officer to render a decision [on matters the Hearing Officer found were not the subject of the amended complaints] as requested by BellSouth.").

<sup>4</sup> See Final Order, *In Re: Petition of BellSouth Telecommunications, Inc. to Convene a Contested Case to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements*, Docket No. 97-01262 at 11 (February 23, 2001).

<sup>5</sup> *Id.* (emphasis added).

<sup>6</sup> See, e.g., Order Appointing A Pre-Hearing Officer, *In Re: Generic Docket to Consider Technology Advances and Geographic Deaveraging*, Docket No. 01-00339 at 2 (June 26, 2001).

**II. THE CLECS' ACCUSATIONS THAT THE PRE-HEARING OFFICER'S ORDER REQUIRES THEM TO "PROVE THEIR ENTIRE CASE BEFORE THE AUTHORITY ESTABLISHES THE SCOPE OF THE PROCEEDING" IS AS HYPOCRITICAL AS IT IS MERITLESS.**

The CLECs have asked the Pre-Hearing Officer to order "a revisiting of all UNE rates in Tennessee" and to require BellSouth "to file the BSTLM for Tennessee as well as its other revised and updated cost studies." *See* Motion at 4. In other words, the CLECs have asked the Pre-Hearing Officer to order BellSouth not only to put on its entire case with regard to "all UNE rates" at this early stage of the proceeding, but also to do so using an entirely different model than the one adopted by the TRA. Yet when the Pre-Hearing Officer ordered the CLECs to provide support for their assertion that technology advances require the revisiting of hundreds (if not thousands) of UNE rates, the CLECs hypocritically protested that the Pre-Hearing Officer's Order "is not reasonable" because it "require[s] the CLECs to, basically, prove their entire case" at "this early stage in this proceeding." *See* Motion at 3. These protests are meritless, and the Pre-Hearing Officer should summarily reject them.

As the Pre-Hearing Officer notes, the comments the CLECs filed in this docket "focus on advances impacting loops and switching." *See* Order at 3. The massive list of UNEs the CLECs ask the TRA to revisit in this docket, however, "includes elements other than loops and switching." *See* *Id.* In her Order, the Pre-Hearing Officer found that additional information is needed "to aid the Authority in developing a comprehensive list of the UNE rates to be fixed in this docket." *Id.*

The Pre-Hearing Officer, therefore, concluded that it would assist the TRA if the CLECs would supplement their comments "by providing a detailed description of the technology advance implementing each item listed in the Attachment to the *Consolidated CLEC Comments* and describe in detail how the advance has reduced the cost of the item." *Id.* at 3-4.

This clearly is within the authority the TRA granted the Pre-Hearing Officer to "determin[e] the scope of this docket . . . ," *see* Order Appointing Pre-Hearing Officer at 2, and it is a reasonable exercise of that authority. As explained above, the TRA did not convene this docket to recreate the wheel – instead, it convened this docket to consider whether technology advances have taken place that warrant the revisiting of the rates for certain UNEs.<sup>7</sup> The Pre-Hearing Officer, therefore, acted both reasonably and appropriately in ordering the CLECs to explain what alleged technology advances warrant the TRA's consideration of any adjustments to any given UNE rate in this docket. Contrary to the CLECs' assertions, this is not a requirement that the CLECs' "prove their entire case" at this stage of the proceeding. Instead, it is simply a reasonable requirement that the CLECs' make a showing that the massive undertaking they have requesting of the TRA in their Comments is truly related to purported technology advances and is not simply a request, under the ruse of technology advances, for yet another generic

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<sup>7</sup> If, during the course of this proceeding, the CLECs can prove that technology advances warrant a revisiting of any specific UNE rate, BellSouth will take such technology advances into account as directed by the TRA using an appropriate cost model.

UNE proceeding designed to revisit each and every one of the final UNE rates that it already has established in Docket No. 97-01262.

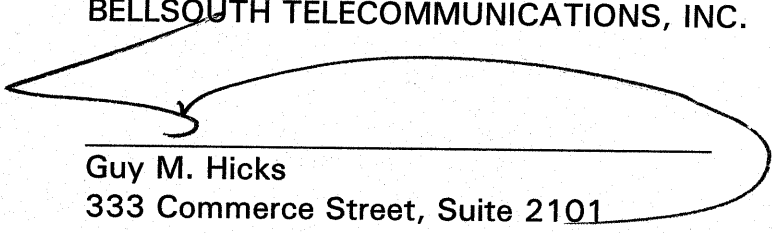
The Pre-Hearing Officer, therefore, should not accept the CLECs' thinly-veiled attempts to transform this proceeding into something that it is not. Instead, the Pre-Hearing Officer should require the CLECs to comply with her Order.

### **CONCLUSION**

For the reasons set forth above, the Pre-Hearing Officer should deny the CLECs' Motion for Reconsideration.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.



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**CERTIFICATE OF SERVICE**

I hereby certify that on July 12, 2002, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☒ Facsimile
- ☐ Overnight

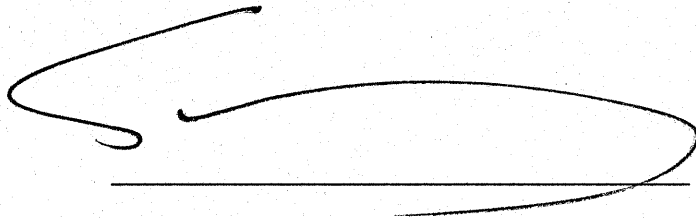
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